of evidence from the point of view of administration.[10] The holding in one case where relations are simple cannot serve as a precedent for another case where the situation is complicated. Precedents and presumptions should give place to freedom of discretion for the trial court, whose peculiar position enables it to pass intelligently upon the "lay-legal" ambiguity of particular questions.

C. S. J.

Evidence: Res Gestae.—In the Estate of Gleason[1] the Supreme Court comes a little closer to a sound definition and application of the res gestae rule, although as Mr. Justice Melvin remarks, "definitions of res gestae are as numerous as prescriptions for the cure of rheumatism and generally about as useful."

The will of the decedent was attacked upon the ground of undue influence and unsoundness of mind. It appears that after executing the will, the testator left the office of the scrivener but returned in ten or fifteen minutes, and in effect said that his wife compelled him to make the will. The statement was, however, made in an excited manner.

The trial court admitted the evidence as bearing on the question of soundness of mind, but not for the purpose of establishing undue influence by the beneficiary. This ruling is in accord with the California cases,[2] though perhaps the instructions should have included a statement that the evidence was admissible on the issue of undue influence, for the purpose of showing the mental condition of the testator but not of showing that undue influence was exercised by any particular person.[3] The appellant, however, seems to have contended that the evidence was admissible for the purpose of proving undue influence by the wife, and to have based this contention on the res gestae exception to the hearsay rule. The convenient obscurity of this phrase has made it a catch-all for a motley assortment of rules and exceptions. These have been carefully analyzed and distinguished.[4] The case at bar comes within none of the legitimate applications of the rule. A will validly and finally executed as this was can not be impeached by remarks on another occasion whether ten years or ten minutes after its making.

The exception for spontaneous exclamations depends upon an accident or startling occurrence causing an unpremeditated statement,

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[10] Farrell v. United States, supra; Thayer, Preliminary Treatise on Evidence at the Common Law, pp. 525, 537. (The larger discretion to be given trial courts is defended by pointing out the large discretion already confided to them in other trial matters and the satisfactory manner in which it is exercised).

[1] Estate of Gleason (Feb. 24, 1913), 45 Cal. Dec. 266, 130 Pac. 872.

[2] Estate of McDevitt (1892), 95 Cal. 17, 30 Pac. 101; Estate of Calkins, (1896), 112 Cal. 296, 44 Pac. 577; Estate of Snowball (1910), 157 Cal. 301, 107 Pac. 598; Estate of Kilborn (1912), 162 Cal. 4, 120 Pac. 752.

[3] Wigmore on Evidence section 1738.

[4] Thayer, Legal Essays, p. 245; Wigmore on Evidence section 1757.

which, because of its undesigned character, carries with it a certain guarantee of truth.[5] The making of a will, however, can hardly be said to be a startling accident productive of spontaneous exclamations, and in the principal case the exclamations seem the result of deliberate reflection for ten or fifteen minutes after the execution of the will.

The chief value of the opinion of the court consists in the recognition of the fact that this particular branch of the so-called res gestae exception to the hearsay rule is based upon the spontaneity of the exclamation and that the exclamation may be spontaneous though not "absolutely contemporaneous with the main event." To demand that the exclamation accompany the act is to ignore the reason for the exception. If, by an accident, an elevator drops suddenly, the exclamation of the elevator operator immediately after the elevator stops and the fall is at an end, may be just as spontaneous as the remarks while the elevator is falling. The recognition of this in the principal case would seem to reestablish the case of People v. Vernon,[6] and repudiate the reasoning of later California cases,[7] though not necessarily the decisions.

A. M. K.

Homestead: Effect of Decree of Divorce on Statutory Homestead.—An interesting example of judicial legislation is afforded by the doctrine, illustrated by the recent case of Cooper v. Miller,[1] that a statutory homestead may be vacated by a decree of divorce.[2] The statute which creates the homestead right provides for its abandonment in two ways only,—by declaration of abandonment and by a grant executed by the husband and wife.[3] And the Courts have, in general, been very strict in the requirement that these statutory forms be complied with. Thus, neither the death of one of the spouses,[4] nor the death of the only other members of the family,[5] nor the removal of the spouses from the State,[6] nor the declaration of a new homestead on other land,[7] nor the execution of a mortgage upon the land,[8] (even though the mortgage takes the form of an absolute grant), will operate to extinguish the homestead. It is only, we believe, in the single situation presented in Cooper v. Miller that a homestead duly declared

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[5] People v. Vernon (1868), 35 Cal.. 49, 95 Am. Dec. 49.
[6] (1868) 35 Cal. 49, 95 Am. Dec. 49.
[7] People v. Ah Lee (1882), 60 Cal. 85; People v. Wong Ark (1892), 96 Cal. 125, 30 Pac. 1115 (opinion of Mr. Justice Garoutte); Lissak v. Crocker Estate Co., (1897), 119 Cal. 442, 51 Pac. 688; Murphy v. Board of Police Pension Fund Commissioners (1905) 2 Cal. App. 468, 83 Pac. 577.
[1] Cooper v. Miller (1913) 45 Cal. Dec. 298.
[2] Shoemake v. Chalfant (1874) 47 Cal. 432.
[3] California Civil Code, § 1243.
[4] In re Fath's Estate (1901), 132 Cal. 609, 64 Pac. 995.
[5] Roth v. Insley (1890) 86 Cal. 134, 24 Pac. 853.
[6] Porter v. Chapman (1884) 65 Cal. 365, 4 Pac. 237.
[7] Waggle v. Worthy (1887) 74 Cal. 266. 15 Pac. 831.
[8] Kennedy v. Gloster (1893) 98 Cal. 143, 32 Pac. 941.